REMARKS

As an initial matter, in the event the Examiner does not allow the present claims (which Applicant cannot see why that would be the case) Applicant contends that the rejection should not be final. According to MPEP 706.07,

> Before final rejection is in order a clear issue should be developed between the examiner and applicant.
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> The applicant who is seeking to define his or her invention in claims that will give him or her the patent protection to which he or she is justly entitled should receive the cooperation of the examiner to that end, and not be prematurely cut off in the prosecution of his or her application.
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> The examiner should never lose sight of the fact that in every case the applicant is entitled to a full and fair hearing, and that a clear issue between applicant and examiner should be developed, if possible, before appeal.

Here, as the Examiner acknowledges, "the Examiner believes there appears to be a miscommunication on what is actually being combined". In view of such acknowledgement, it is not seen how a **clear issue** has developed.

Moreover, as MPEP 706.07(a) instructs,

> Under present practice, second or any subsequent actions on the merits shall be final, **except where the examiner introduces a new ground of rejection** that is neither necessitated by applicant's amendment of the claims, nor based on information submitted in an information disclosure statement filed during the period set for the in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p). (Emphasis added)

Here, the applicant did not amend the claims or submit an IDS; but the examiner introduced a new ground of rejection. As the Examiner points out, "[i]n the previous office action, the Figure 1 from Viteri was being combined with the Figure 1 of Ooka .... In light of the arguments presented, the current rejection relies on the schematic of

figure 2 of Viteri in view of Figure 1 of Ooka." Thus, the present rejection should not be final and Applicant requests withdrawal of the finality of the rejection.

Turning now to the substance of the rejection, claims 1-11 are rejected as being unpatentable over Viteri in view of Ooka. Claim 12 is rejected as being unpatentable over Viteri in view of Ooka and further in view of Golomb. Applicant respectfully traverses. Claim 1 has been amended to incorporate the features of claims 2-4 and to specify that the air compressor of the gas turbine supplies air to the air separation plant, which in turn, supplies oxygen to the plant, including the combustor of the gas turbine. Support for the amendments can be found in the claims, the Figure, and the specification, e.g., paragraph [0043]. Thus, no new matter is being added. Moreover, the claim amendments should be entered because they put the claims in condition for allowance. The amendments were not made earlier because there was a miscommunication concerning the previous rejection.

The present method provides an air-based method of generating power via a gas turbine and a steam turbine that operates in a first and a second mode. Advantageously, mode (B) is a viable option in situations where mode (A) may not be a viable option, for example, when there is low availability of coal bed methane or there are high CO_2 levels in an underground storage region. Moreover, when mode (A) is operating, the air compressor would be on standby and at least a bleed stream of the air from the air compressor could be used productively in the air separation plant producing oxygen for use in mode (A).

Neither Viteri nor Ooka, alone or in combination, contemplate such use of the air compressor of the gas turbine. Moreover, one of skill in the art upon studying either of

Viteri or Ooka would be led to modify them to achieve the presently claimed method. Accordingly, there is no *prima facie* case of obviousness. Applicant therefore requests withdrawal of the rejection and allowance of the claims.

It is believed that all the claims are in condition to be allowed. The Examiner is invited to contact the undersigned attorney for the Applicant via telephone at (312) 321-4276 if such communication would expedite allowance of this application.

Respectfully submitted,

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